

## 5. Rule 3

a. This rule describes the required contents of an application to transfer. At a minimum, this rule serves the following important functions: informs applicants of the data they must provide; informs transferees of the responsibilities which they will assume upon approval of the transfer; provides notice to applicants of the possible consequences of submitting an application which contains false information or misrepresentations; and informs applicants of the process under which their applications will be handled.

b. The Commission clarified and modified consensus language by adding the first paragraph of Rule 3 (proposed Rule 4.1). As changed, the rule informs the transferor and the transferee that an application must be filed and that they may file a joint application.

c. The Commission further clarified and modified consensus language in Rule 3 by adding a new Rule 3.1 to inform a transferor or transferee which has been designated as a provider of last resort that it must supplement its application in accordance with Commission rules relating to universal service and the Colorado High Cost Fund. We believe this makes the application process easier to understand. In addition, it notifies a transferor or transferee about supplemental data it must provide if it has been designated as a provider of last resort.

d. The Commission added a new Rule 3.2.1, which requires that the application contain the applicant's name,

address, and other identifying information. Although the consensus rule contained no such provision, it is obviously information which the Commission and those potentially affected by the proposed transfer need to know. In addition, providing this identifying information will not be burdensome on an applicant while the absence of such information could prove to be harmful to the public interest.

e. We have added a new Rule 3.2.8. Pursuant to this rule and as part of its application, an applicant must provide a statement that, by filing the application, it agrees: first, to answer all questions propounded by the Commission or authorized members of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application; and, second, to permit the Commission or authorized members of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application.

f. This area was not addressed in the consensus rule submitted by the Working Group. The issue did, however, receive considerable attention during rulemaking hearings held with respect to related rules. The participants at the hearings acknowledged that the Commission must be able to investigate applications and applicants, to obtain information from applicants, and to satisfy itself that it has the information which the Commission considers necessary to make a decision on the

application. The parties felt that the Commission should be able to obtain this information from any applicant, whether or not it is a "public utility" as defined in § 40-1-103, C.R.S.

g. The parties also expressed the preference for prompt Commission action on applications. To this end, they preferred rules which require an applicant to supply, in its application, data sufficient to permit the Commission and interested parties to understand the authority sought and to evaluate the application without the necessity of setting the application for hearing and engaging in discovery to obtain information. It was their expressed hope that full disclosure in the application would lessen the chances of an application's being opposed or contested. Assuming the required information is provided with an application and is complete, the parties hoped that the Commission would be able to reach a decision on an uncontested application without setting the application for hearing. The parties stated that, again assuming an application was unopposed, prompt Commission action on an application would be beneficial to the applicant and to the public.

h. Aware that information submitted with the application might need to be clarified and that the Commission might need to investigate an application to satisfy itself, the parties suggested that the Commission could use its authority pursuant to §§ 40-3-110 and 40-6-106, C.R.S., to obtain information from applicants. Some went so far as to state that submission of an application renders an applicant subject to our jurisdiction as

a "public utility." We are not convinced that the cited statutory provisions allow us to obtain data from all applicants.

i. The Commission needs sufficient data (a) to assure itself of a transferee's ability to provide local exchange telecommunications service and to serve the public interest and (b) to support a Commission finding that a transferee is able and willing to provide service consistent with applicable statutes and Commission rules, will provide the service as promised so that end-users and other providers are protected, and will enhance the universal availability of basic local exchange service. We can obtain this information several ways: through our authority found in §§ 40-3-110 and 40-6-106, through discovery in administrative proceedings, and through the cooperation of the person from whom the information is requested.

j. A prerequisite found in the cited statutes is: the person from whom the Commission seeks information, or to whose books and records the Commission seeks access, must be a "public utility" (see definition of public utility in footnote 12, above). Applicants who are not certificated in Colorado, and therefore are not public utilities, may seek authority to offer local exchange telecommunications services. Sections 40-3-110 and 40-6-106 appear not to apply to those applicants.<sup>14</sup>

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<sup>14</sup> As relevant to this decision, these sections would apply to a person who holds a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, an operating authority, or any combination of these.

k. As a result, absent an agreement such as that found in Rule 3.2.8, it seems possible that the Commission could not obtain information from applicants who are not public utilities without setting the application for hearing and conducting discovery (see, e.g., Rule 77 of the Rules of Practice and Procedure, 4 CCR 723-1). Conducting discovery could prove to be cumbersome, costly to the Commission and all parties, and time-consuming. In addition, this approach would delay consideration of the application. Such a result runs counter to both our wishes and the expressed preferences of the rulemaking participants.

l. The most expeditious way for the Commission to obtain the information we need is that contained in Rule 3.2.8. In addition, it is not unreasonable for the Commission to require an applicant to cooperate with the Commission in its investigation of the application. Indeed, an applicant should welcome the opportunity to provide information to, and to clarify any points for, the Commission, the more so because the alternative is the possibility of lengthy delay.

m. We view Rule 3.2.8 as a reasonable approach which satisfies our needs and those of the applicants. For these reasons, among others, we adopt the rule.

n. Rule 3.2.11 (proposed Rule 4.2.10) was not a consensus rule. The parties agreed that a transferee should be aware that the transfer is conditional upon transferee's meeting certain prerequisites (e.g., having effective and applicable

tariffs or price lists and complying with statutes, rules, and orders). Nonetheless, the parties could not agree about the degree of compliance with statutes and Commission rules and orders required of a transferee. Some parties requested that the Commission demand only "substantial" compliance; at least one party argued that the limitation was unnecessary and too restrictive. We agree that the limitation is not warranted.

(1) First, absent a definition of "substantial" (which the parties did not supply), use of that modifier could produce confusion and uncertainty on the part of a transferee. Similarly, use of the word "substantial" complicates enforcement of this rule and could prove to be fertile ground for litigation if the Commission and a transferee do not share a common understanding of the word "substantial" as used in this context. The absence of the word "substantial" eliminates these potential difficulties.

(2) Second, and equally important, the absence of "substantial" from Rule 3.2.11 is beneficial. It puts a transferee clearly and unequivocally on notice that compliance with the statutes, rules, and orders is obligatory for those who wish to do business in this state. Obviously, this requirement does not limit the Commission's discretion to equitably evaluate each transferee's circumstances to reach a reasonable and balanced result.

(3) On balance, we determine that use of the word "substantial" is counter-productive. Accordingly, for the

reasons stated among others, we issue Rule 3.2.11 without the word "substantial."

o. Rule 3.2.12 (proposed Rule 4.3) was not a consensus rule.

(1) The parties agreed that an applicant must be on notice that, upon Commission order, a transfer may be null and void if the information contained in the application is found to be false or to contain misrepresentations. The parties also agreed that an applicant should be on notice that the Commission might take action, but, in accordance with due process requirements, can do so only after notice and opportunity to be heard.

(2) We agree that Rule 3.2.12 is an important notice provision. We also agree that we can take action against a transferee or transferor only in accordance with the law, which necessarily includes notice and opportunity for the applicant to be heard. The applicant should be given the opportunity to be heard at least on the issues of (a) whether or not the information contained in the application is false or contains misrepresentations and, if so, (b) the action, if any, which the Commission should take as a result. Rule 3.2.12 is consistent with, and furthers, these principles.

(3) The parties could not agree whether or not the misrepresentations should be "material." We determine that Rule 3.2.12 should not contain the word "material." We adopt the same reasons for rejecting "material" as those stated above with

respect to use of the term "substantial" (see discussion concerning Rule 3.2.11, above). We find that the absence of the modifier "material" allows the Commission to retain its full authority to review the circumstances of each provider and to exercise its discretion and judgment on a case-by-case basis.

#### **D. Adoption of Rules**

We are convinced that these rules regulating applications by local exchange telecommunications providers to execute a transfer are essential to achieving the goals of HB 1335 in an orderly and timely fashion. The rules appended to this Decision as Attachment A are appropriate for adoption.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. The rules set forth in Attachment A are adopted.
2. This Order adopting the attached rules shall become effective 20 days following the Mailed Date of this Decision in the absence of filing of an application for rehearing, reargument, or reconsideration. In the event an application for rehearing, reargument, or reconsideration to this Decision is timely filed, and in the absence of further order of this Commission, this Order of adoption shall become final upon a Commission ruling denying any such application.
3. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register*



along with the opinion of the Colorado Attorney General regarding the legality of the rules.

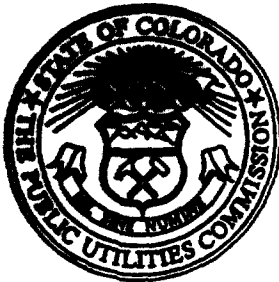
4. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion of the Colorado Attorney General.

5. The 20-day period provided for in § 40-6-114(1), C.R.S., with which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.

6. This Order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 7, 1996.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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CHRISTINE E. M. ALVAREZ

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VINCENT MAJKOWSKI

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Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith  
Director

**THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO**

**RULES REGULATING APPLICATIONS  
BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS  
TO EXECUTE A TRANSFER**

4 CCR 723-37

**BASIS, PURPOSE AND STATUTORY AUTHORITY.**

The basis and purpose of these rules is to establish regulations regarding applications (1) to transfer a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, or an operating authority; (2) to obtain controlling interest in a local exchange telecommunications provider, whether by transfer of assets or transfer of shares; (3) to transfer assets not in the ordinary course of business; (4) to execute a merger; or (5) to do any combination of the foregoing.

These rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law, and there are no duplicating or overlapping rules.

These rules are issued pursuant to § 40-2-108 and § 40-15-503(2), C.R.S.

**RULE 4 CCR 723-37-1.      APPLICABILITY.** These rules are applicable to all local exchange telecommunications service providers.

**RULE 4 CCR 723-37-2.      DEFINITIONS.** The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

723-37-2.1      Applicant. Any person filing an application with the Commission pursuant to these rules.

723-37-2.2      Application. A formal filing with the Commission which requests Commission authority to execute a transfer.

723-37-2.3      Certificate of public convenience and necessity or CPCN. Commission-granted authority, subject to such terms and conditions as the Commission may establish, to provide the local exchange telecommunications services specifically identified and approved by the Commission; consists of a certificate to provide local exchange telecommunications services and an operating authority within specific operating area or areas.

723-37-2.4      Certificate to provide local exchange telecommunications services or certificate. Commission-granted authority to offer local exchange telecommunications services in the state of Colorado; the first of two prerequisites to obtaining a certificate of public convenience and necessity.

723-37-2.5      Commission. The Public Utilities Commission of the state of Colorado.

723-37-2.6      Local exchange telecommunications service or service. Basic local exchange service and other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (e), C.R.S.; or any of the above singly or in combination.

723-37-2.7      Operating area. Specific geographic area in which a provider of local exchange telecommunications services is authorized by the Commission to exercise the rights and privileges granted pursuant to a certificate of public convenience and necessity.

723-37-2.8      Operating authority. Commission-granted authority to offer local exchange telecommunications services within an operating area; the second and last prerequisite to obtaining a certificate of public convenience and necessity.

723-37-2.9      Provider of local exchange telecommunications services or provider. Person who holds a certificate of public convenience and necessity to provide local exchange telecommunications services.

723-37-2.10     Transfer. Any or all of the following: (a) a transaction to convey, by sale, assignment, or lease, a

certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, an operating authority, or any combination of these; (b) a transaction to obtain, whether by conveyance of assets or shares, controlling interest in a local exchange telecommunications provider; (c) a conveyance of assets not in the ordinary course of business; (d) execution of a merger; or (e) any combination of the foregoing.

**RULE 4 CCR 723-37-3.      APPLICATION TO TRANSFER - CONTENTS OF APPLICATION.** To obtain permission to execute a transfer, either the transferor or the transferee must file an application with the Commission, unless the proposed transfer is a transfer to or from a wholly-owned subsidiary (see Rules 6). If they elect to do so, the transferor and the transferee may file a joint application.

723-37-3.1      Provider of last resort. If the Commission has designated either the transferor or the transferee as a provider of last resort, the application must contain the information required by the Commission's rules relating to universal service and the Colorado High Cost Fund, in addition to the information required by Rules 3.2.

723-37-3.2      Content of application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified, attached exhibits:

723-37-3.2.1      The name and complete address (street, city, state, and zip code) of each party to the proposed

transfer and the name under which the transferee is, or shall be, providing service in Colorado if the transfer is approved;

723-37-3.2.2 Specific identification of the assets, including any certificate, operating authority, or CPCN, or rights obtained under such certificate, operating authority, or CPCN, proposed to be sold, assigned, leased, or otherwise transferred;

723-37-3.2.3 The proposed date of the transfer;

723-37-3.2.4 The compensation involved in the transfer;

723-37-3.2.5 A statement showing the accounting entries, including any plant acquisition adjustment, gain, or loss proposed on the books by each party before and after the proposed transfer. These accounting entries shall be in accordance with the Uniform System of Accounts ("USOA") or Generally Accepted Accounting Principles ("GAAP"), or as directed by the Commission;

723-37-3.2.6 Copies of any sales agreement or contract of sale and all documents pertaining to the transfer;

723-37-3.2.7 A statement of the facts (not in the form of conclusory statements) relied upon to show that the proposed transfer is consistent with, and not contrary to, the statements of public policy in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.;

723-37-3.2.8 A statement that the applicant agrees (a) to answer all questions propounded by the Commission or any authorized member of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application and (b) to permit the Commission

or any authorized member of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application;

723-37-3.2.9 A statement indicating, if the application is assigned for hearing, the town or city where the applicant prefers the hearing to be held and any alternative choices;

723-37-3.2.10 A statement that the applicant understands that the filing of the application does not, by itself, constitute authority to execute the transfer and that the applicant shall not undertake the proposed transfer unless and until a Commission decision granting the application is issued;

723-37-3.2.11 A statement that the transferee understands that, if a transfer is granted, such transfer is conditional upon: (a) the existence of applicable, effective tariffs or price lists for relevant services, including any required adoption notices; (b) compliance with the statute and all applicable Commission rules; and (c) compliance with any and all conditions established by Commission order;

723-37-3.2.12 A statement that the applicant understands that, if the contents of the application are found to be false or to contain misrepresentations, any transfer granted may be, upon Commission order, null and void; and

723-37-3.2.13 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

**RULE 4 CCR 723-37-4.      TRANSFeree FITNESS TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.**

723-37-4.1      If the transfer requested is a transfer of a certificate, an operating authority, or a CPCN, the transferee must provide the Commission with the information required pursuant to Rules 4 (except Rules 4.1.10) and, as appropriate, Rules 6 or Rules 7 of the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services and must receive an appropriate grant of authority from the Commission.

723-37-4.2      If (a) the transfer requested is to obtain controlling interest in a local exchange telecommunications service provider, to transfer assets or stock, or to execute a merger and (b) the transferee does not have a certificate of public convenience and necessity to provide local exchange telecommunications service within the operating area which is the subject of the transfer, the transferee must provide the Commission with the information required pursuant to Rules 4 (except Rules 4.1.10) and, as appropriate, Rules 6 or Rules 7 of the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services and must receive an appropriate grant of authority from the Commission.

**RULE 4 CCR 723-37-5.      PROCESSING OF APPLICATIONS.**

723-37-5.1      The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1. No transfer requested in an application shall be effective until the Commission issues an order approving it, with or without hearing.



723-37-5.2        The Commission shall deem all applications complete in accordance with the procedural requirements of 4 CCR 723-1, Rules 70, or other Commission rules.

723-37-5.3        Absent unusual or extraordinary circumstances, the Commission will reject an application that does not meet the requirements of Rules 70 of the Rules of Practice and Procedure and close the docket pertaining to that application.

**RULE 4 CCR 723-37-6.        TRANSFER TO OR FROM WHOLLY-OWNED SUBSIDIARY.** Where either the transferor or the transferee is the wholly-owned subsidiary of the other party to the transfer, the parties are not required to file an application pursuant to Rules 3. However, at least 30 days prior to the anticipated closing date of such a transfer, the parties shall file a written notification of the transfer with the Commission. After review of the notification, the Commission may, by written order, require the transferor to file an application pursuant to Rules 3. In that event, the Commission may approve or reject the application to execute a transfer or may approve it subject to modification or conditions. If the Commission does not require filing of such application, or otherwise act, within 30 days of receipt of notice under this rule, no application for transfer shall be required; and the transfer shall be deemed approved.

Attachment A  
DOCKET NO. 95R-555T  
Decision No. C96-161  
4 CCR 723-37  
Page 9 of 9

**RULE 4 CCR 723-37-7.      WAIVER OR VARIANCE.** The Commission may permit a waiver or variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable.

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(Decision No. C96-292)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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IN THE MATTER OF PROPOSED )  
RULES REGARDING CERTIFICATION )  
OF PROVIDERS OF LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES. )

DOCKET NO. 95R-555T

DECISION ADOPTING RULES

Mailed Date: March 15, 1996  
Adopted Date: March 7, 1996

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| <b>BY THE COMMISSION:</b>  | 1  |
| Background and Procedural Matters  | 1  |
| <b>DISCUSSION</b>  | 6  |
| Consensus and "Substantial Deference"  | 6  |
| Need for Rules Regulating Proposals by Local Exchange<br>Telecommunications Providers to Abandon, to<br>Discontinue, or to Curtail Any Service | 7  |
| Content of Rules   | 8  |
| Proposal of the Universities   | 9  |
| Rule 2   | 12 |
| Rule 3   | 13 |
| Rule 4   | 16 |
| Adoption of Rules  | 21 |
| <b>ORDER</b>   | 21 |
| The Commission Orders That:  | 21 |

I. **BY THE COMMISSION:**

A. **Background and Procedural Matters**

1. This matter is before the Commission to consider adoption of rules regulating proposals by local exchange telecommunications providers to abandon, to discontinue, or to curtail any local exchange telecommunications service. These rules

implement the requirements of House Bill No. 95-1335 ("HB 1335"), codified at §§ 40-15-501 et seq., C.R.S.

2. In enacting HB 1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. See § 40-15-501, C.R.S. Consistent with that policy goal, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace, eventually, the existing regulatory framework. Specifically, the Commission must:

- a. establish standards for basic telephone service;
- b. establish mechanisms to advance the goal of universal service, i.e., provision of basic telephone service to all at just and reasonable rates;
- c. consider the necessity for specific mechanisms to advance goals relating to universal access to advanced telecommunications services; and
- d. resolve other issues relating to implementation of competition in the local exchange market.

3. The Commission has the responsibility to open local exchange telecommunications markets to competition and to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To that end, the Commission must establish the terms and conditions under which competition will occur.<sup>1</sup> Logically, this includes the process by which a certificated provider of basic local exchange service applies for permission to abandon, to discontinue, or to

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<sup>1</sup> See §§ 40-15-502(1) and 40-15-502(3)(b), C.R.S.

curtail any service provided pursuant to a certificate of public convenience and necessity ("CPCN").<sup>2</sup>

B. HB 1335 contains an equally important, and somewhat counter-balancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service, which is

the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S.

C. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the economic conditions of urban and rural areas of the state. *Id.* Further, the Commission must adopt rules which allow simplified regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

D. The Working Group established pursuant to §§ 40-15-503 and 40-15-504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335. These proposals are found

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<sup>2</sup> A certificate of public convenience and necessity is a precondition to providing local exchange telecommunications service. See § 40-15-503(2)(e), C.R.S.

in the Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated November 30, 1995 (the "November report"), and in the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "December report").

E. As part of the November report, the Working Group transmitted to the Commission proposed rules regulating proposals by local exchange telecommunications providers to abandon, to discontinue, or to curtail any service.<sup>3</sup> These proposed rules were attached to our notice of proposed rulemaking in this docket, Decision No. C95-1172, dated November 29, 1995.

F. In accordance with our notice of proposed rulemaking, a hearing on these proposed rules was held on January 12, 1996.<sup>4</sup> The following parties submitted written and oral comments for our consideration: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&T Wireless"); Colorado Independent Telephone Association ("CITA"); Farmers Telephone Company, et al.; ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Office of Consumer Counsel ("OCC"); staff of the Commission ("Staff"); TCI Communications,

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<sup>3</sup> November report at Appendix G, discussed in the November report at pp. 76-86.

<sup>4</sup> All oral presentations were made at the public hearing held on January 12, 1996. In accordance with the notice of proposed rulemaking, the Commission was available to receive public comment on January 25 and 26, 1996. However, no member of the public appeared on either of those dates to present comment.

Inc., et al. ("TCI"); University of Colorado and Colorado State University ("Universities"); U S WEST Communications, Inc. ("USWC"); and Charles Wimber.

G. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission took administrative notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995.<sup>5</sup> These reports are filed in Docket No. 95M-560T, the repository docket regarding implementation of §§ 40-15-105 et seq., C.R.S.

## II. DISCUSSION.

### A. Consensus and "Substantial Deference"

1. The rules proposed by the Working Group were not wholly "consensus" rules. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we give "substantial deference" to the

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<sup>5</sup> This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

Outreach Report at 4.

proposals submitted by the Working Group with respect to issues on which the Working Group reports that it has reached consensus on or before January 1, 1996.

2. The statute does not define "substantial deference." Thus, in the course of the HB 1335-related rulemakings, we must develop and apply our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

3. In implementing our understanding of "substantial deference," we take the following into consideration:<sup>6</sup> our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rule with all provisions of § 40-15-501 et seq., C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rule and the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable

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<sup>6</sup> This listing is not a definitive statement of the considerations relied upon by the Commission.



rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective. We examine each proposed consensus rule in light of these considerations.

4. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale supporting any decision by this Commission to reject a consensus rule must be clearly articulated.

**B. Need for Rules Regulating Proposals by Local Exchange Telecommunications Providers to Abandon, to Discontinue, or to Curtail Any Service.** No party in this proceeding questioned the need for these rules, and we agree. The inability of the parties to reach consensus on some of the rules does not negate this agreement. Rather, the disagreements were the result of differences of opinion on specific points.

1. First, the Commission has an obligation to assure provision of basic service to all residents of Colorado at just, reasonable, and fair rates. To meet this obligation the Commission must be informed, particularly about plans to transfer customers from one provider to another, and must have a reasonable opportunity to investigate fully and to take appropriate action.

2. Second, the affected customers must be informed so they may exercise whatever options they may have.